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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,709	12/22/2004	Oliver Clemens Robert Kratzer	21854-00050-US	4837
30678	7590	09/05/2006	EXAMINER	
CONNOLLY BOVE LODGE & HUTZ LLP P.O. BOX 2207 WILMINGTON, DE 19899-2207			HUSON, GREGORY L	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 09/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/518,709

Applicant(s)KRATZER, OLIVER CLEMENS
ROBERT**Examiner**

Gregory L. Huson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 6-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 December 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 12/22/2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

1. The abstract of the disclosure is objected to because of the inclusion of legal phraseology. Correction is required. See MPEP § 608.01(b).
2. The disclosure is objected to because of the following informalities: At page 7 item 29 is identified as "lid engagement means", while at page 8 item 29 is identified as "mating member".

Appropriate correction is required.

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: In claim 7 line 2 "sealing bead" is recited, while in the specification a "sealing strip" is identified. In claims 11 and 21, "cam follower means" is identified and in the detailed description of the specification this terminology is missing.
4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the corrugation extending out further than the edge of the lid must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate

changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to because the lead line for 23 in figure 4 identifies the wrong object, and in figure 9 "27" should read --23--. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and

informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 7, 8, 13, 17, and 18 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 7 “a dependent flange” is a double inclusion of the previously recited dependent flange in claim 6. In claim 8, the “peripheral flange” lacks proper antecedent basis in the claim. In claim 13 “the corrugation” lacks proper antecedent basis, because it appears the claim should actually depend from 12 (and the claim will be so treated on the merits). Also in claim 13, “the peripheral edge of the lid” lacks proper antecedent basis in the claim. In claim 17, “a dependent flange” is a double inclusion, and, “the pouring attachment” lacks proper antecedent basis because it appears the claim should actually depend from 16 (and the claim will be so treated on the merits).

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 6-10, and 12 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Pool, US patent number 4,240,568.

Pool shows (as in figures 2 and 7) a container and lid combination including a container 65, a closure element 20, with an internal flange 35 that abuts and sealingly engages the internal edge of the rim of container 65 (see fig. 7). There is a pivotable lid 21 attached to the closure element 20 with a dependent internal flange 44 adapted to sealingly engage an internal edge 28 of the closure element by wiping past sealing "bead" 29. The lid is shaped to allow drain back to the container when applied to the closure. The closure element also contains a pouring spout 30, which guides the flow of liquid from the container. The spout extends outwardly from the internal edge of the closure element against which the lid seals, and the flange of the closure element incorporates a peripheral bead 40 on the outer face to seat below the container rim. Note the upstanding wall of the container 65 includes as at fig. 7, an outwardly facing circumferential corrugation 69, located below the rim of the container.

10. Claims 16-18 and 20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Pool, US patent number 4,240,568.

Pool shows (as in figures 11-14) a container and lid combination including a pouring attachment 110, container 129, sealing lid 112, outer annular rim 119, and lid retaining means 123. The lid includes dependent flange 158-159, which wipes past bead 123 on the pouring attachment. The flange of the lid is "shaped" to allow drain back when the lid is on the attachment, and there is a pouring spout 122, extending outwardly and adapted for guiding the flow of the liquid contents of a container on which it may be mounted.

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pool, US patent number 4,240,568.

As previously discussed with regard to Pool in paragraph 9 above, further, Pool shows all in the claimed invention except the corrugation 69 extending outwardly further than the peripheral edge of the lid.

The amount that the corrugation extends outwardly relative to the lid is a simple matter of design choice dependent upon the size of the container, and as such fails to patentably distinguish.

13. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pool, US patent number 4,240,568 in view of Giarrante, US patent number 5,893,489.

As previously discussed in paragraph 9 above regarding Pool, further, Pool shows all in the instant invention except the pivoted lid hinged with the aid of a cam and follower arrangement.

Giarrante however shows a similar paint can arrangement wherein the lid is hinged to the closure attachment via a cam 24 and follower 25 to hold the lid in a preferred position.

It would have been obvious to one of ordinary skill in the art to have provided the lid arrangement of Pool with a pivoted lid incorporating a cam and follower arrangement as

shown by Giarrante to enable selective positioning of the lid relative to the closure element and container, as clearly taught by Giarrante.

14. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pool, US patent number 4,240,568 in view of Kensey, US patent number 5,234,133.

As previously discussed in paragraph 9 above regarding Pool, further, Pool shows all in the instant invention except an integrally molded handle on the closure element.

Kensey however shows such an integrally molded handle to aid in the decanting of liquid from the container.

It would have been obvious to one of ordinary skill in the art to have provided an integrally molded handle on the closure element of Pool to aid in the dispensing of liquid from the container, especially in light of the clear teachings of Kensey.

15. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pool, US patent number 4,240,568 in view of Kensey, US patent number 5,234,133.

As previously discussed in paragraph 10 above regarding Pool, further, Pool shows all in the instant invention except a handle.

Kensey however shows such handle to aid in the decanting of liquid from the container.

It would have been obvious to one of ordinary skill in the art to have provided a handle on the device of Pool to aid in the dispensing of liquid from the container, especially in light of the clear teachings of Kensey.

16. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pool, US patent number 4,240,568 in view of Giarrante, US patent number 5,893,489

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As previously discussed in paragraph 10 above regarding Pool, further, Pool shows all in the instant invention except the lid hinged with the aid of a cam and follower arrangement.

Giarrante however shows a similar arrangement wherein the lid is hinged to the pouring attachment via a cam 24 and follower 25 to hold the lid in a preferred position.

It would have been obvious to one of ordinary skill in the art to have provided the lid arrangement of Pool with a hinged lid incorporating a cam and follower arrangement as shown by Giarrante to enable selective positioning of the lid relative to the closure element and container, as clearly taught by Giarrante.

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Stevens, Leach, and Yeater et al. show a similar pouring arrangement with a lid. Embree shows another such arrangement including a lid that seals on the pouring fitment at the level of the rim of the can. Johnson and Balson show structuring such an arrangement to enable stacking of containers one on top of another.

Any inquiry concerning this communication should be directed to Gregory L. Huson at telephone number 571-272-4887.



Gregory L. Huson
Supervisory Patent Examiner
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